



In the
Supreme Court of the United States
OCTOBER TERM 1975

NMS INDUSTRIES, INC.,
Petitioner

versus

HAROLD B. SCHWARTZ and ERIC ROSENBAUM
Respondents

BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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STATEMENT

Petitioner's statement of the case is but an unsuccinct and argumentative reurging of its arguments presented to the Courts below. It fails to show any conflict with opinions of this most Honorable Court, or a conflict within the Courts of Appeals, or with the laws of the State of Texas, a concise factual relation of the circumstances making up this lawsuit is to be found on the opinion of Judge Mahon, Trial Judge, at Appendix B to Petitioner's Application for a Writ of Certiorari, PP B-1-B-6, "Findings of Fact", and also restated at Appendix A of same Application, Opinion of the United States Court of Appeals for the Fifth Circuit, PP A-5-A-9.

REASONS FOR NOT GRANTING THE WRIT

- a. There is no conflict with the decisions of this Court.
- b. There is no conflict with the decision of another court of appeals.
- c. There is no constitutional questions.
- d. The opinions of the Courts below are in conformity with accepted principals of law and are correct.

U. S. Sup. Ct. Rule 19(1) (b), 28 U.S.C.A., provides that a Writ of Certiorari is not a matter of right; rather, special and important reasons are necessary; Petitioner has seven questions none of which should induce this Court to grant Petitioner's Application. The failure to register stock pursuant to an agreement is a conversion under the law of Texas.

B & H Warehouse, Inc. v. Atlas Van Lines, Inc. 490 F. 2d 818 (5th Circuit. 1974); *City National Bank in Wichita v. Kiel*, 348 S. W. 2d 614 (Tex. Civ. App. 1961, writ ref. n.r.e.); *Gresham v. Island City Savings Bank*, 2 Tex. Cir. App. 52, 21 S. W. 556 (1893) no writ hist. "Bad faith" is no issue in this case, and the Courts below implemented the agreements of the parties according to their plain language. It was stipulated that all conditions precedent been met (TR. 5, TR.33). *Stowers v. Harper*, 376 S.W. 2d 34 (Tex. Civ. App. 1964, err. ref. n.r.e.); *Gray Co. v. Jacobs*, 363 S.W. 2d 167 (Tex. Civ. App. 1962, err. ref. n.r.e.). The matter of damage is to be determined by the Trial Court according to the mandate of the 5th Circuit.

CONCLUSION

For the reasons set forth above, the Petition for Certiorari should be denied.

Respectfully Submitted,

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PROOF OF SERVICE

I, Stanley M. Kaufman, for the Respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 5th day of December, 1975, I served copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari by mailing copies thereof in duly addressed envelopes with postage prepaid, to its attorney of record as follows:

**Logan Ford
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Stanley M. Kaufman